

Administrative Letter 2001 - 7

August 17, 2001

TO: ALL INSURERS LICENSED TO WRITE LIFE INSURANCE, ACCIDENT AND SICKNESS INSURANCE, VARIABLE LIFE INSURANCE, ANNUITIES AND/OR VARIABLE ANNUITIES IN VIRGINIA; ALL HEALTH MAINTENANCE ORGANIZATIONS, HEALTH SERVICES PLANS, DENTAL SERVICES PLANS AND OPTOMETRIC SERVICES PLANS LICENSED IN VIRGINIA

RE: VOLUNTARY EXPEDITED FILING PROCEDURES FOR INSURANCE APPLICATIONS DEVELOPED TO ALLOW DEPOSITORY INSTITUTIONS TO MEET THEIR DISCLOSURE OBLIGATIONS UNDER SECTION 305 OF THE GRAMM-LEACH-BLILEY ACT

Background

The four principal banking regulatory agencies published final consumer protection rules regarding bank insurance sales on Dec. 4, 2000. The published rules may be obtained from the *Federal Register*, Volume 65, Number 233. The federal regulators recently agreed to postpone the effective date for implementation of the consumer protection rules from April 1, 2001 to Oct. 1, 2001. This was done to accommodate requests from depository institutions for more time to prepare to implement the regulations.

The federal banking agencies promulgated consumer protection regulations pursuant to Section 305 of the Gramm-Leach-Bliley Act (GLBA), governing the sale of insurance products by depository institutions. Among other things, the regulations require depository institutions that sell insurance products to make certain disclosures and receive consumer acknowledgements, which are intended to reduce consumer confusion in the sale of insurance products by depository institutions. To best ensure that these requirements are met, depository institutions may prefer to have these disclosures included on insurance application forms. In order to comply with the federal regulations in this fashion, depository institutions that sell insurance products will need to ask the insurers to make the necessary filings with this state. Pursuant to § 38.2-316 C of the Code of Virginia, insurance application forms from the carriers identified above are subject to review and approval. Application forms, and any subsequent revisions made to previously approved application forms, must be submitted to the Bureau of Insurance (BOI) in Virginia for approval.

It is in the best interest of this Commonwealth and the producers, insurers and depository institutions that operate within its boundaries to adopt an expedited process for reviewing these application forms. This administrative letter is promulgated consistent with the spirit of functional regulation to make it more efficient for depository institutions to comply with their obligations to their functional regulators. The purpose of this administrative letter is to provide regulated entities with the appropriate forms and instructions to receive expedited approval for insurance application forms that are revised only to add notices to allow depository institutions to meet their disclosure obligations under Section 305 of the GLBA if this method of compliance is chosen. This process is voluntary. It is up to you to choose whether or not to use this process to expedite the filings of such amended insurance applications.

In pertinent part, Section 305 of the GLBA requires:

The Federal banking agencies shall prescribe and publish in final form . . . customer protection regulations (which the agencies jointly determine to be appropriate) that –

- (A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and
- (B) are consistent with the requirements of this Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

Explanation and Instructions for Expedited Review

Attached to this administrative letter are two model notices for use by depository institutions and other “covered persons” in complying with the written disclosure requirements related to insurance sales that are imposed by Section 305 of the GLBA and the corresponding regulations promulgated by the federal banking agencies. (In addition to depository institutions, a “covered person” is any other person who sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the depository institution or on behalf of a depository institution.)¹ Disclosure Notice 1 provides the written disclosures that must be given to a consumer in connection with an initial purchase of an insurance or annuity product that is unrelated to an extension of credit. Disclosure Notice 2 provides the written disclosures that must be given to a consumer in connection with the solicitation, offer or sale of an insurance or annuity product that is related to an extension of credit.

¹ Activities on behalf of a depository institution include activities where a person, whether at an office of the depository institution or at another location sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

- (i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the depository institution;
- (ii) The depository institution refers a consumer to a seller of insurance products or annuities and the depository institution has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or
- (iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the depository institution.

The federal banking agencies have reviewed the content of both notices and determined that it meets the requirements of 12 C.F.R. 14.40 (a) and (b) in the case of national banks; 12 C.F.R. 208.84 (a) and (b) in the case of state member banks; 12 C.F.R. 343.40 (a) and (b) in the case of state non-member banks; and 12 C.F.R. 536.40 (a) and (b) in the case of savings associations.

In addition to the content of the notices, the disclosures required by these regulations must be “readily understandable” and in a “meaningful” form. Examples of the types of methods that an institution could use to call attention to the nature and significance of the information provided include: (i) a plain-language heading to call attention to the disclosures; (ii) a typeface and type size that are easy to read; (iii) wide margins and ample line spacing; (iv) boldface or italics for key words; and (v) distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information. See 12 C.F.R. 14.40(c)(6) in the case of national banks; 12 C.F.R. 208.84(c)(6) in the case of state member banks; 12 C.F.R. 343.40(c)(6) in the case of state non-member banks; and 12 C.F.R. 536.40(c)(6) in the case of savings associations.

References to “the bank” should be changed to “the savings association” in the case of a savings association, or the actual name of the bank or savings association may be used.

Forms with Instructions

Insurers seeking expedited approvals of these application forms will be required to submit complete submission packages to the BOI, including complete cover (transmittal) letters and the actual forms, (refer to § 38.2-316 and 14 VAC 5-110-10 et seq.). *New form numbers must be assigned to the revised application forms to distinguish them from the previously approved versions on file with the BOI. The new form number may be limited simply to a change in the edition date, provided that is part of the form number.* In addition, the EXPEDITED FILING—SECTION 305 APPLICATION Form Filing Transmittal Header, a copy of which is attached to this administrative letter, must be completed and attached to the submission package. This form will serve to notify the BOI that the filing is to be handled expeditiously, in accordance with the directives in this administrative letter.

Insurer(s) submitting the filing must also certify by signing the appropriate blank on the transmittal form, that the **only** change made from the previous application form is the addition of the disclosure notices required by Section 305 of the Gramm-Leach-Bliley Act for depository institutions.

NOTE: The BOI has recently identified some insurers that are using previously approved application forms that have not been revised and re-filed to address new or re-stated requirements, particularly those addressed in the BOI's Administrative Letter 1997-9. Therefore, it should be noted that, while the BOI will expedite the approval of application forms revised solely to address the disclosure notices described above, it reserves the right to review these forms at a later date to ensure that they comply with all other requirements currently in place. Should the BOI identify areas of non-compliance in these application forms, it will take appropriate action, including, but not limited to, the imposition of

penalties if warranted. However, due consideration will be given to the time needed to revise and resubmit these forms, as well as the particular circumstances involved.

To be complete, a form filing must include the following:

1. A completed, certified Form Filing Transmittal Header for each insurer.
2. One cover or transmittal letter and one copy of each application form to be reviewed for the reviewer's records for each insurer, (submit two copies if insurer would like one returned).
3. A postage-paid, self-addressed envelope **large enough to accommodate the return.**

If this filing is for multiple companies, separate submissions should be completed for each company. Companies are encouraged, however, to submit all submissions together to expedite the approval process.

To ensure meeting the October 1, 2001 compliance date set forth in the federal regulations, such forms should be received by the BOI no later than September 15, 2001.

Effective Date

The expedited approval process described in this administrative letter shall take immediate effect and shall expire on January 1, 2002.

Questions or comments regarding this letter may be directed to:

Althelia P. Battle
Supervisor, Forms and Rates Section, Life and Health Division
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218
804-371-9110

Yours truly,

Alfred W. Gross
Commissioner of Insurance

attachments

EXPEDITED FILING—SECTION 305 APPLICATION
Form Filing Transmittal Document

Ed. 4/13/01

This page applies to the following state(s) _____

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #

Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail

Filing information

Line of Insurance	
Company Program Title (Marketing title) (if applicable)	
Filing Type	
This application is used with:	
Effective Date Requested	
Filing date	
Company Tracking Number	
Date filing approved in domiciliary state	

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	Form # Include edition date	Replacement Or withdrawn?	If replacement, give form # it replaces	Previous State Filing Number, if required by state
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a form filing must include the following:

- ☐ A completed Form Filing Transmittal Header for each insurer.
- ☐ One copy of a cover letter and each application form to be reviewed for the reviewer's records for each insurer, (send duplicate copies if company would like a copy returned for its records).
- ☐ A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that the only change made from any previously filed and, if applicable, approved application form is the addition of the disclosure notices required by Section 305 of the Gramm-Leach-Bliley Act

Signature: _____ Print Name: _____ Title: _____

DISCLOSURE NOTICE 1: Model Written Disclosure for the Initial Purchase of Insurance or Annuity Products that are *Not Sold* in Connection with an Extension of Credit

Insurance products and annuities:

- Are not a deposit or other obligation of, or guaranteed by, the bank or any affiliate of the bank;
- Are not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or any affiliate of the bank;
- [Involve investment risk, including the possible loss of value.] *Note: This disclosure may not be required for all products.*

Please sign to acknowledge receipt of these disclosures:

Name of Customer:

Customer Signature:

Date: _____

DISCLOSURE NOTICE 2: Model Written Disclosure for Insurance Products that Are Solicited, Offered, or Sold in Connection with an Extension of Credit

In connection with your credit application, [name of bank or savings association] advises you of the following:

- [Name of bank or savings association] may not condition the extension of credit you are applying for on whether you purchase an insurance product or annuity from the bank or the bank's affiliate.
- [Name of bank or savings association] may not condition the extension of credit you are applying for on your agreement not to obtain, or a prohibition on your obtaining, an insurance product or annuity from an entity not affiliated with the bank.

Insurance products and annuities:

- Are not a deposit or other obligation of, or guaranteed by, the bank or any affiliate of the bank;
- Are not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or any affiliate of the bank;
- [Involve investment risk, including the possible loss of value.] *Note: This disclosure may not be required for all products.*

Please sign to acknowledge receipt of these disclosures:

Name of Customer:

Customer Signature:

Date: _____